

UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF VIRGINIA  
ALEXANDRIA DIVISION

UNITED STATES OF AMERICA	.	Criminal No. 1:10cr485
	.	
vs.	.	Alexandria, Virginia
	.	January 5, 2015
JEFFREY ALEXANDER STERLING,	.	10:45 a.m.
	.	
Defendant.	.	
	.	
. . . . .	.	

TRANSCRIPT OF HEARING  
BEFORE THE HONORABLE LEONIE M. BRINKEMA  
UNITED STATES DISTRICT JUDGE

APPEARANCES:

FOR THE GOVERNMENT:	JAMES L. TRUMP, AUSA DENNIS M. FITZPATRICK, AUSA United States Attorney's Office 2100 Jamieson Avenue Alexandria, VA 22314 and ERIC G. OLSHAN, Deputy Chief Public Integrity Section of the Criminal Division United States Department of Justice 1400 New York Avenue, N.W. Suite 12100 Washington, D.C. 20005
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FOR THE DEFENDANT:	EDWARD B. MAC MAHON, JR., ESQ. Law Office of Edward B. MacMahon, Jr. 107 East Washington Street P.O. Box 25 Middleburg, VA 20118 and BARRY J. POLLACK, ESQ. Miller & Chevalier Chartered 655 - 15th Street, N.W. Suite Washington, D.C. 20005-5701
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COMPUTERIZED TRANSCRIPTION OF STENOGRAPHIC NOTES

1 ALSO PRESENT:

DAVID N. KELLEY, ESQ.  
JOEL KURTZBERG, ESQ.

2  
3 OFFICIAL COURT REPORTER:

ANNELEIESE J. THOMSON, RDR, CRR  
U.S. District Court, Fifth Floor  
401 Courthouse Square  
4 Alexandria, VA 22314  
5 (703)299-8595

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I N D E XDIRECT      CROSS      REDIRECT      RECROSSWITNESS ON BEHALF OF  
THE GOVERNMENT:

James Risen	9	24	34	36
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EXHIBITSMARKEDRECEIVEDDEFENDANT'S:

No. 151	26
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No. 152	29
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1 P R O C E E D I N G S

2 THE CLERK: Criminal Case 10-485, United States of  
3 America v. Jeffrey Alexander Sterling. Would counsel please  
4 note their appearances for the record.

5 THE COURT: Mr. MacMahon -- I saw defense counsel.  
6 Where is the government?

7 All right, Mr. Pollack, you get the prize. You're  
8 the first one up here.

9 MR. POLLACK: I was hoping for a prize, Your Honor.

10 THE COURT: Here we go.

11 (Defendant present.)

12 MR. MAC MAHON: Good morning, Your Honor.

13 THE COURT: Good morning, Mr. MacMahon.

14 MR. MAC MAHON: Sorry, we were out in the conference  
15 room.

16 THE COURT: I know, we were off schedule this  
17 morning.

18 All right, counsel, please put your appearances on  
19 the record.

20 MR. TRUMP: Good morning. Jim Trump on behalf of the  
21 United States.

22 MR. OLSHAN: Eric Olshan on behalf of the United  
23 States. Good morning, Your Honor.

24 THE COURT: Good morning.

25 MR. FITZPATRICK: Good morning, Your Honor. Dennis

1 Fitzpatrick on behalf of the United States.

2 THE COURT: Good morning.

3 All right, Mr. MacMahon and Mr. Pollack, you're here,  
4 and the defendant, Mr. Sterling, is here.

5 MR. MAC MAHON: Yes, Your Honor.

6 THE COURT: All right.

7 MR. POLLACK: That's correct, Your Honor. Thank you.

8 THE COURT: Now, how we're going to proceed this  
9 morning is this will be an open hearing. Then we're going to  
10 have a recess. I think we'll have some CIPA matters we also  
11 need to address, so that obviously will have to be a sealed,  
12 closed hearing, but the first order of business this morning is  
13 the taking of some testimony from Mr. Risen, unless something  
14 has changed in that respect.

15 And before we get to that, you may recall several  
16 years ago, Mr. Risen filed an affidavit in connection with this  
17 case, and that affidavit was filed in a redacted form on the  
18 public docket, and then there was a sealed version of the  
19 affidavit. Mr. MacMahon, I believe it was, a few weeks ago  
20 requested the opportunity to see the unsealed affidavit, and it  
21 turns out for some reason, we didn't have a copy of it in  
22 court.

23 So we've contacted Mr. Stackhouse on behalf of  
24 Mr. Risen. He has submitted to us now the unredacted  
25 affidavit, which has, as I understand it, been filed under

1 seal. I've looked at the redactions and, quite frankly, don't  
2 think there's any reason why this should remain under seal. It  
3 just mentioned a few grand jury-related matters which were  
4 purely procedural.

5 What's the government's position on that?

6 MR. TRUMP: Are we talking about the 2011 affidavit,  
7 Your Honor?

8 THE COURT: I believe so. Let me look at the date on  
9 this thing.

10 MR. TRUMP: Document 115?

11 THE COURT: I don't have a document -- 371 is the  
12 docket number. Well, I'm sorry, that may be the new docket  
13 number now.

14 MR. TRUMP: That's the new.

15 THE COURT: Yeah, hold on a second.

16 MR. TRUMP: The one that was filed June 21, 2011?

17 THE COURT: I'm looking for the date. Hold on.  
18 Yes, June 21, 2011.

19 MR. TRUMP: I haven't looked at what the redactions  
20 are. We can take a look at it and get back to the Court fairly  
21 quickly as to whether there's anything that is still  
22 classified.

23 THE COURT: It wasn't classified. I don't believe  
24 there was anything classified. It was a matter of it was grand  
25 jury-related, 6(e) kind of issues, and I just --

1 MR. TRUMP: I would just like an opportunity to take  
2 a quick look.

3 THE COURT: All right.

4 MR. TRUMP: But if that's the case, then, of course,  
5 we would have no problem.

6 THE COURT: And, Mr. MacMahon, I'll be glad to give  
7 you a copy of this after the hearing today. Really what was  
8 redacted is absolutely pro forma.

9 MR. MAC MAHON: Thank you, Your Honor. I just -- it  
10 just was I couldn't get a -- I was just trying to get a  
11 complete record before we had the hearing, Your Honor.

12 THE COURT: That's fine. It won't add anything of  
13 substance. It is purely grand jury procedural issues, all  
14 right?

15 MR. MAC MAHON: Thank you.

16 THE COURT: All right. So now do we have anything  
17 preliminary before we hear testimony from Mr. Risen?

18 Do we have counsel here for Mr. Risen?

19 MR. KELLEY: Yes. David Kelley, Cahill, Gordon &  
20 Reindel.

21 MR. KURTZBERG: Joel Kurtzberg, Cahill, Gordon &  
22 Reindel.

23 THE COURT: All right. And who's going to be the  
24 main spokesperson for Mr. Risen?

25 MR. KELLEY: Mr. Kurtzberg will be.

1 THE COURT: All right, Mr. Kurtzberg, come up to the  
2 lectern for just a second. I'm assuming you've had some -- I  
3 hope you have -- some discussion with counsel before today so  
4 you sort of know -- everybody has worked out the parameters of  
5 today's hearing?

6 MR. KURTZBERG: We have had some discussion, Your  
7 Honor, yes. I can't tell you that I do know all of the  
8 parameters, but we have, we have had discussions.

9 THE COURT: All right. Well, then Mr. Risen is here.  
10 We'll put him on the stand. I assume -- who's calling him  
11 actually?

12 MR. TRUMP: I guess we'll begin, Your Honor.

13 THE COURT: So we'll let the government do the direct  
14 examination; and obviously, at any point if you need to object,  
15 I'm sure you will, and then we'll have to address that issue at  
16 that point.

17 MR. KURTZBERG: Yes, Your Honor.

18 THE COURT: All right.

19 MR. KELLEY: Your Honor, before we proceed, may we  
20 just have one moment with government counsel?

21 THE COURT: Go ahead.

22 (Discussion among counsel off the record.)

23 MR. KELLEY: Thank you, Your Honor.

24 MR. TRUMP: We're ready to proceed, Your Honor.

25 THE COURT: All right, Mr. Risen, if you'd go up to



Risen - Direct

9

1 the witness stand?

2 JAMES RISEN, GOVERNMENT'S WITNESS, AFFIRMED

3 DIRECT EXAMINATION

4 BY MR. TRUMP:

5 Q. Good morning, sir. Would you please state your name for  
6 the court reporter?

7 A. James Risen.

8 Q. Would you spell your last name, please?

9 A. R-i-s-e-n.

10 Q. Mr. Risen, how are you employed?

11 A. I write books, and I am a reporter for *The New York Times*.

12 Q. And how long have you been a reporter for *The New York*  
13 *Times*?

14 A. Sixteen years.

15 Q. Have you previously submitted affidavits in this  
16 proceeding and in the prior grand jury proceeding?

17 A. Yes.

18 Q. Do you recall how many affidavits roughly?

19 A. Two or three. I'm not sure.

20 Q. Can you recall -- in 2011, there was a proceeding with  
21 respect to a trial subpoena, and you submitted an affidavit  
22 with respect to that proceeding?

23 A. Yes.

24 Q. Was that your last affidavit?

25 A. I believe so.

Risen - Direct

10

1 Q. Now, Mr. Risen, I'd like to show you a couple of  
2 documents.

3 THE COURT: Yes, sir?

4 Do you have one for counsel?

5 MR. KURTZBERG: May I have a copy, Your Honor?

6 BY MR. TRUMP:

7 Q. Do you have in front of you what's been marked as  
8 Government Exhibit 75, Government Exhibit 83, and Government  
9 Exhibit 132?

10 A. Yeah.

11 Q. Beg your pardon?

12 A. Yes.

13 Q. And do you recognize what's been marked as Government  
14 Exhibit 75?

15 A. Yes.

16 Q. And what, what is that?

17 A. It's a story I wrote for *The New York Times*.

18 Q. And it's entitled "A Nation Challenged: The Intelligence  
19 Agency; Secret CIA Site in New York was Destroyed on September  
20 11"?

21 A. Yes.

22 Q. And that's your article?

23 A. Yes.

24 Q. It was published on or about November 4, 2001?

25 A. Yeah. That's the date here, yeah.

Risen - Direct

11

1 Q. Approximately then?

2 A. Yeah.

3 Q. Government Exhibit 83, do you recognize that?

4 A. Yes.

5 Q. And what is that?

6 A. Another story I wrote for *The New York Times*.

7 Q. And that's entitled "Fired by CIA, He Says Agency  
8 Practiced Bias"?

9 A. Yes.

10 Q. And was that published on or about March 2, 2002?

11 A. I don't, I don't see the date here.

12 Q. I believe it's on the second page.

13 A. Oh, yeah. Yeah.

14 Q. And finally, do you recognize what's been marked as  
15 Government Exhibit 132?

16 A. Yes.

17 Q. And is that chapter 9 of your book *State of War*?

18 A. That's the title of it, yeah. I haven't read it.

19 Q. Chapter 9 is entitled "A Rogue Operation"?

20 A. Yes.

21 Q. And was *State of War* published in early 2006?

22 A. Yes.

23 Q. Mr. Risen, did you have a confidentiality agreement with  
24 your source or sources for chapter 9 of your book *State of War*?

25 A. As I said in my 2011 affidavit, I had -- in my reporting,

Risen - Direct

12

1 I have used both unnamed and identified sources, and where my  
2 reporting and where my articles or book describe information  
3 gathered from unnamed sources, I had unnamed sources. Where I  
4 had -- where my articles or book says I had identified sources,  
5 I had identified sources.

6 Q. To the extent that you had unidentified sources for  
7 information contained in chapter 9, did you have  
8 confidentiality agreements with those unidentified sources?

9 A. As I said, I had -- in those places in which my stories or  
10 my book say that I have unidentified sources, I had  
11 unidentified sources. Where I said that I had identified  
12 sources, I had identified sources.

13 Q. And my question is for those unidentified sources for  
14 information that appears in chapter 9 of *State of War*, did you  
15 have confidentiality agreements with those sources?

16 A. As I said in my affidavit in 2011, where I had  
17 unidentified sources -- where I say that I had unidentified  
18 sources in my articles or in my books, I had unidentified  
19 sources. Where I say I did not have -- where I had identified  
20 sources, I had identified sources.

21 Q. Do you understand the question I'm asking you, sir?

22 A. I do.

23 Q. Did you have confidentiality agreements with your  
24 unidentified sources for chapter 9?

25 A. As I said in my affidavit in 2011, when I had unidentified

Risen - Direct

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1 sources, I had unidentified sources. When I said I had  
2 identified sources, I had identified sources.

3 THE COURT: Mr. Risen, that is not responding to the  
4 question. Now, you're a craftsman of language; you understand  
5 the question. If you have a problem with the question, your  
6 counsel can note an objection, but he hasn't objected. It's a  
7 simple question. Either you have an agreement, a  
8 confidentiality agreement or you don't, or you believe that you  
9 do, but you do need to respond to the question.

10 THE WITNESS: I believe that's not the question he's  
11 really asking.

12 THE COURT: Mr. Trump, do you want to ask it again?

13 BY MR. TRUMP:

14 Q. Did you have unidentified sources for information  
15 contained in chapter 9?

16 A. I had information from unidentified sources in chapter 9,  
17 yes.

18 Q. And for those sources, did you have confidentiality  
19 agreements?

20 A. As I said, I had unidentified sources for chapter 9.

21 Q. Did you have confidentiality agreements with those  
22 sources?

23 A. As I said, I had unidentified sources for chapter 9.

24 MR. TRUMP: One moment, Your Honor.

25 Q. With respect to the article "Fired by CIA, He Says Agency

Risen - Direct

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1 Practiced Bias," the November 4, 2001 article, did you have a  
2 nonconfidential reporter-source relationship with Jeffrey  
3 Sterling?

4 A. I decline to answer that question.

5 Q. And why is that, sir?

6 A. I don't want to provide information that I believe the  
7 government wants to use as a building block for a larger mosaic  
8 or in this case.

9 Q. In your 2011 affidavit, you made that assertion; is that  
10 correct?

11 A. That's correct.

12 Q. And you stated in your affidavit --

13 THE COURT: What paragraph are you looking at?

14 MR. TRUMP: This is document 115-2, filed June 21,  
15 2011, in paragraph 62. And I quote: "I did have a  
16 nonconfidential reporting relationship with Mr. Sterling in  
17 connection with my March 2002 article entitled 'Fired by CIA,  
18 He Says Agency Practiced Bias.'"

19 Q. Was that the statement in your affidavit?

20 A. Yes.

21 Q. Is that an accurate statement?

22 A. As I said, I don't want to answer that question because I  
23 am not willing to provide information in any way that will  
24 prove or disprove a mosaic that the government seems to be  
25 trying to make.

Risen - Direct

15

1 Q. The information reported in chapter 9 of your book, is  
2 that information -- does the information in chapter 9  
3 accurately reflect information provided to you by your source  
4 or sources?

5 A. Yes. My chapter 9 accurately reflects information I  
6 obtained from a wide range of unnamed and other -- unnamed  
7 sources and other information gathered through my reporting.

8 Q. I'm referring to information in chapter 9, and you used a  
9 phrase, "other information." What other information are you  
10 referring to?

11 A. Information I gathered from unidentified sources or other  
12 information from other forms of reporting.

13 Q. So there's information from unidentified sources as well  
14 as other information from other sources -- of other sources of  
15 reporting?

16 A. Yes.

17 Q. And what would those other sources be?

18 A. I am not going to get into details about that. I can say  
19 that I had information from unidentified sources and other  
20 forms of information gathered through reporting.

21 Q. Is there public record information within chapter 9?

22 A. I'm just going to say, repeat what I just said: I  
23 obtained information from unidentified sources and from other  
24 forms of information I gathered through my reporting.

25 Q. And a category of that other information, is it public

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1 record information?

2 A. As I said, I'll repeat what I just said: There will be --  
3 there is information from unidentified sources, and there is  
4 other forms of information gathered through my reporting.

5 Q. Is there a reason why you cannot say whether there is  
6 information in chapter 9 from public record sources?

7 A. As I said, I am not going to provide -- as I said in a  
8 separate context, I'm not going to provide the government with  
9 information that they seem to want to use to create a mosaic to  
10 prove or disprove certain facts.

11 Q. You have, in fact, answered that question in a prior  
12 affidavit, though, haven't you, sir?

13 A. Which question?

14 Q. The question about public record information.

15 A. I don't remember that.

16 Q. One moment.

17 In your June 2010 affidavit, at page 6, paragraph  
18 14 --

19 A. Which, which affidavit?

20 Q. June 3, 2010. And I can show it to you if you like, but  
21 in paragraph 14, it says, ". . . and the sections it does not  
22 intend to ask about" -- "it" being the government -- "are  
23 generally those that do not implicate confidential information  
24 at all, such as the passages at page 199 to 200 outlining  
25 publicly available information about Congressional legislation,



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1 the passage on page 201 chronicling the United States' public  
2 criticism of Iran, and the pages (sic) on page 206 discussing  
3 appearances before Congress."

4 Do you recall making those statements?

5 A. I don't recall that. If you could show it to me? I don't  
6 recall that at all.

7 Q. Is that your affidavit?

8 A. I don't recall it, frankly, but --

9 Q. Did you look at the last page of that?

10 A. Page 6?

11 Q. The last page has your signature, does it not?

12 A. Yeah, I'm not arguing -- I probably did do this. I just  
13 don't remember.

14 Q. Is that an accurate statement, paragraph 14 on page 6?

15 A. Frankly, I don't remember.

16 Q. That's not the question, sir. Is it an accurate  
17 statement?

18 A. Accurate statement about what?

19 Q. Is the passage I read from paragraph 14 on page 6 of your  
20 affidavit an accurate statement, yes or no?

21 A. Can I talk to my lawyer, please?

22 THE COURT: Counsel, you'd better consult, because  
23 that was submitted to the Court, and I assume it's under the  
24 penalty of perjury. So yes, go ahead and talk.

25

Risen - Direct

18

1 (Discussion between the witness and his attorneys off  
2 the record.)

3 THE COURT: All right, we'll take a five-minute  
4 recess.

5 (Recess from 11:08 a.m., until 11:17 a.m.)

6 (Defendant present.)

7 THE COURT: Mr. Trump?

8 BY MR. TRUMP:

9 Q. Mr. Risen, when we took a break, we were on page 6 of your  
10 affidavit dated June 3, 2010, paragraph 14. Is paragraph 14 an  
11 accurate statement?

12 A. Yes.

13 Q. So there, there is public source information within  
14 chapter 9, *State of War*, correct?

15 A. Yes.

16 Q. Is there also information that you obtained independently  
17 based upon your own research?

18 A. Yes, yeah.

19 Q. For example, you went to Vienna, correct?

20 A. Yes.

21 Q. You made observations which you include in your writing of  
22 chapter 9, correct?

23 A. Yes.

24 Q. Now, getting back to a question that I previously asked  
25 about confidential sources, way back in 2008, you submitted an

Risen - Direct

19

1 affidavit with respect to the grand jury process; is that  
2 correct?

3 A. Separate from this one?

4 Q. Yes.

5 A. Yeah. Okay.

6 Q. And in that affidavit, at paragraph 43, you stated, "I  
7 could not have written chapter 9 of *State of War* and many if  
8 not all of the referenced articles and books without the use of  
9 confidential source or sources. My source or sources for  
10 chapter 9 provided me with information with the understanding  
11 that I would not reveal their identities. In circumstances of  
12 which I promise confidentiality to a source, I cannot break  
13 that promise."

14 Was that an accurate statement in 2008?

15 A. Yes.

16 Q. Is it an accurate statement today?

17 A. Yes.

18 Q. And you repeated that statement almost verbatim in your  
19 2011 affidavit to this Court; is that correct?

20 A. I believe so, yeah.

21 Q. So is it true that you had confidential sources who  
22 provided -- source or sources who provided information that  
23 appears in chapter 9?

24 A. Yes.

25 Q. Is it your position that you would not breach that

Risen - Direct

20

1 agreement?

2 A. Those agreements, yes.

3 Q. Has your position changed since 2008?

4 A. No.

5 Q. Has it changed as a result of the litigation in this case?

6 A. No.

7 Q. Has it changed as a result of the Fourth Circuit opinion a  
8 year and a half ago?

9 A. No.

10 Q. Is it your testimony today that regardless of any threat  
11 of sanctions, that you would not under any circumstance testify  
12 as to the identity of a confidential source or sources who  
13 provided information for chapter 9?

14 A. Yes.

15 Q. With respect to chapter 9 and the different categories of  
16 information -- information provided by confidential sources,  
17 information that may be in the public record, information based  
18 upon independent research -- have you accurately reflected the  
19 information obtained from confidential sources in chapter 9?

20 A. Chapter 9 accurately reflects all of my reporting.

21 Q. And in other words, if information came from a  
22 confidential source, that information is accurately reflected  
23 in chapter 9?

24 A. Yes.

25 Q. If I understand what your counsel told us previously,

Risen - Direct

21

1 however, you are unwilling to parse out paragraph by paragraph  
2 or category by category which information came from which  
3 category of source. Is that a fair statement?

4 A. Yes.

5 Q. So if I were to ask you, for example, at page 210,  
6 paragraph in numeral sequence of the --

7 A. Are you reading from the chapter, from the chapter?

8 Q. From the chapter, page 210.

9 A. Yeah.

10 Q. You write, "The CIA had obtained genuine Russian nuclear  
11 weapons blueprints from a Russian scientist and had forwarded  
12 them to one of the national laboratories . . ." my question  
13 to you --

14 A. I'm sorry, where were you?

15 Q. Page 210.

16 A. Um-hum. What did you read?

17 Q. The paragraph that begins, "The CIA had obtained genuine  
18 Russian nuclear weapons blueprints from a Russian scientist and  
19 had forwarded them to one of the national laboratories . . ."

20 A. Um-hum.

21 Q. Is it my understanding that you're unwilling to testify  
22 today as to whether that information came from a confidential  
23 source?

24 A. Yes.

25 Q. So you're unwilling to verify whether you have accurately

Risen - Direct

22

1 reported that information from a confidential source?

2 A. Yes.

3 Q. And that's true no matter what question and which

4 paragraph I would choose from chapter 9?

5 A. Yes.

6 Q. In your reporting and your characterization of identified

7 sources, to the extent that you have quoted from an identified

8 source, are those quotations accurate?

9 A. I'm sorry, could you repeat that?

10 Q. To the extent in the three writings that you have there in

11 front of you, the two articles and the book, to the extent that

12 you quote from an identified source, are the quotations

13 accurate?

14 A. Yes.

15 Q. So in the article "Fired by CIA," to the extent you quote

16 from Jeffrey Sterling, those quotations are accurate?

17 A. I accurately quoted from the identified sources identified

18 in the story.

19 Q. And one of those identified sources is Mr. Sterling?

20 A. Yes.

21 Q. In the story?

22 A. Yes.

23 MR. TRUMP: The Court's indulgence?

24 THE COURT: Yes, sir.

25 BY MR. TRUMP:

Risen - Direct

23

1 Q. If you were ordered to appear at trial, which begins  
2 January 12, would your testimony at trial be identical to your  
3 testimony today?

4 A. Yes, I believe so.

5 Q. And again, with respect to whether you would reveal  
6 directly or indirectly a confidential source or sources, your  
7 testimony is you would not under any circumstances, under any  
8 threat of sanctions reveal a source or sources for chapter 9?

9 A. Correct, yes.

10 Q. And that position has not changed since 2008?

11 A. Yes.

12 MR. TRUMP: One second.

13 That's all we have.

14 THE COURT: All right. Mr. MacMahon?

15 MR. MAC MAHON: Your Honor, as an initial matter, if  
16 this was, we're trying to find out what the trial testimony is  
17 going to be, we would be moving to dismiss given the many  
18 admissions in the government's case that without asking  
19 Mr. Risen who his source was or sources were or where any of  
20 these events occurred, they can't even make their case, and now  
21 three years later, here we are, and the questions aren't even  
22 asked.

23 I'm not expecting the Court to rule on that now, we  
24 can brief that later, but if we were in court, that motion  
25 would be made, and not knowing the parameters, I wanted to make

Risen - Cross

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1 it now, but there are many especially as to venue unequivocal  
2 statements that the government can't even prove where any of  
3 these disclosures took place without asking Mr. Risen, and now  
4 we just heard that they're not even going to ask him, and so we  
5 would move to dismiss on those grounds.

6 Other than that, Your Honor, I just have a few  
7 questions for Mr. Risen.

8 CROSS-EXAMINATION

9 BY MR. MAC MAHON:

10 Q. Mr. Risen, my name is Edward MacMahon. I'm one of the  
11 attorneys for Mr. Sterling. You and I have never met before,  
12 have we?

13 A. No.

14 Q. We've never spoken before, have we?

15 A. No.

16 Q. And you're aware that the government took the case trying  
17 to compel you to answer questions in this case all the way to  
18 the United States Supreme Court, correct?

19 A. Yes.

20 Q. And you're aware in many of those pleadings, they accused  
21 you, sir, of being inextricably involved in the crimes that  
22 Mr. Sterling is charged with, correct?

23 A. Yeah. I can't remember all of what they said. They said  
24 a lot of things.

25 Q. And now you know that publicly the attorney general at



Risen - Cross

25

1 least has said that you are not to be jailed if you refuse to  
2 answer the questions that his Justice Department went all the  
3 way to the Supreme Court in order to try to compel you to  
4 answer, correct?

5 A. I'm not sure if he ever said that publicly. I just heard,  
6 I've seen news reports about that.

7 THE COURT: Mr. MacMahon, I don't think the  
8 government went to the Supreme Court.

9 Did you-all go to the Supreme Court?

10 MR. TRUMP: No, Your Honor.

11 THE COURT: No.

12 MR. TRUMP: Mr. Risen took the case to the Supreme  
13 Court.

14 THE COURT: Yeah.

15 MR. MAC MAHON: I didn't ask the question well, Your  
16 Honor.

17 Q. But in papers filed with the Supreme Court, the government  
18 took that position, correct?

19 A. Counsel, could you repeat the question?

20 Q. I'll move along, Your Honor.

21 A. Yeah.

22 Q. Now, can I -- Your Honor, we don't have our exhibits  
23 numbered, so I'm just going to have to hand these up to be  
24 numbered, not knowing what to do, but I'd like to show  
25 Mr. Risen an exhibit.

Risen - Cross

26

1 THE COURT: All right, what -- is there just one  
2 exhibit you're showing him?

3 MR. MAC MAHON: I've got just a couple to show him,  
4 Your Honor.

5 THE COURT: Let's do it one at a time since they're  
6 not pre-numbered.

7 MR. MAC MAHON: And I didn't bring enough copies, so  
8 I'll show Mr. Kurtzberg.

9 THE COURT: All right.

10 MR. TRUMP: If counsel will just identify it by the  
11 Bates number, I think we can --

12 THE COURT: That's fine. We'll do this as Defense  
13 Exhibit 151.

14 (Defendant's Exhibit No. 151 was marked for  
15 identification.)

16 MR. MAC MAHON: I'm sorry, Your Honor, what's the  
17 number?

18 THE COURT: Defense Exhibit 151. That's the Bates  
19 stamp number.

20 MR. MAC MAHON: Okay. Thank you.

21 Q. Mr. Risen, have you seen this document before?

22 A. Hold on. I'm not sure. What is it?

23 Q. It says on the, on the first page "Untitled CIA Book by  
24 James Risen."

25 A. Okay.

Risen - Cross

27

1 Q. Does that, does that refresh your recollection as to what  
2 I might have shown you?

3 A. I'm not sure what this document is. Is it a draft of my  
4 chapter?

5 Q. If I proffered to you that it was part of a book proposal,  
6 would that refresh your recollection?

7 A. It's not a book proposal.

8 THE COURT: It's not a book proposal?

9 THE WITNESS: No.

10 THE COURT: No.

11 BY MR. MAC MAHON:

12 Q. Okay. Can you turn to the page that's X00155, please?

13 A. Yeah.

14 Q. And do you see the --

15 A. Oh, I know what this is, yeah.

16 Q. What is it, sir?

17 A. The government got this from Simon & Schuster, correct?

18 Q. You know, I --

19 THE COURT: It doesn't work that way. You can't ask  
20 him questions.

21 (Laughter.)

22 THE WITNESS: He asked me what it is.

23 THE COURT: That's the reporter in you, but you can't  
24 do it as a witness.

25 BY MR. MAC MAHON:

Risen - Cross

28

1 Q. Mr. Risen, I would tell you, but the judge won't let me.

2 A. Okay.

3 Q. No, I -- do you recognize this document, sir?

4 A. Now I do, yeah. Okay.

5 Q. Okay. And what is this document?

6 A. Do you want me to answer?

7 Q. If you can.

8 A. I think -- I'm not positive, but I think it's something  
9 that the government got from my publisher, Simon & Schuster.

10 Q. And is this a document that you wrote?

11 A. You know, I'm not even sure. It's -- to be honest, I  
12 think it was a marketing memo for the Frankfurt book show that  
13 Simon & Schuster had.

14 Q. Okay. And this document said that CIA officers involved  
15 in the operation -- officers plural -- have come to the author  
16 to discuss the case, and they now feel enormous guilt for a  
17 program that they believe has aided Iran's nuclear program.

18 Do you see that?

19 A. Where were you reading?

20 Q. On page marked X00155.

21 A. Which paragraph?

22 Q. The, the paragraph down at the bottom that starts, "CIA  
23 officers."

24 A. Oh, okay. Yeah.

25 Q. Did I read that correctly?

Risen - Cross

29

1 A. "CIA officers," yeah.

2 Q. Is that something you wrote?

3 A. Yeah, I believe it was -- as I said, I think it was a  
4 marketing memo for the Frankfurt book show many years ago when  
5 Simon & Schuster was marketing the book.

6 Q. Okay. And Simon & Schuster published *State of War*,  
7 correct?

8 A. Yes.

9 Q. Are you aware that Mr. Sterling is being charged with mail  
10 fraud arising from the sale of the book *State of War* in the  
11 Eastern District of Virginia?

12 A. Mail fraud? No, I wasn't.

13 MR. MAC MAHON: Can I show another document, Your  
14 Honor? This one is a newspaper article. Again, I'm an article  
15 short. This doesn't have Bates numbers on it, Your Honor.

16 THE COURT: Well, for purposes of this hearing, we'll  
17 make it Defense 152, and hopefully that won't overly confuse  
18 matters, all right?

19 (Defendant's Exhibit No. 152 was marked for  
20 identification.)

21 MR. MAC MAHON: Yes, Your Honor, I'm sorry.

22 Q. Have you seen this document before, sir?

23 A. Yes.

24 Q. Is this an article that you and Mr. Lichtblau wrote?

25 A. "Lichtblau."

Risen - Cross

30

1 Q. How do you say that?

2 A. Eric "Lichtblau."

3 Q. "Lichtblau." On May 2 of 2003?

4 A. Yes.

5 Q. And Mr. Trump asked you a bunch of questions about  
6 disclosing sources. Would the same answers apply if I asked  
7 you who the sources were for the information in -- this article  
8 is entitled "Broad Domestic Role Asked for CIA and the  
9 Pentagon"?

10 A. Yes.

11 MR. KURTZBERG: I object. He's not clear what  
12 question he's referring to.

13 MR. MAC MAHON: That's fair enough, Your Honor. I'll  
14 rephrase the question.

15 THE COURT: Sustained.

16 BY MR. MAC MAHON:

17 Q. Mr. Trump asked you questions about whether you would  
18 disclose sources for any articles that you'd written. Do you  
19 remember those series of questions?

20 A. Yes.

21 Q. And if I asked you if you would disclose -- if you were  
22 willing to disclose any of the sources for the information in  
23 this article, "Broad Domestic Role Asked for CIA and the  
24 Pentagon," would your answer be the same?

25 A. Yes.

Risen - Cross

31

1 Q. Now, Mr. Risen, you were asked to look at some of the  
2 affidavits that you filed in this case. Do you remember filing  
3 an affidavit in June of 2011 in this case?

4 A. Yes.

5 Q. And do you remember giving reasons why you decided -- you  
6 decided to publish the information in chapter 9 of *State of*  
7 *War*, correct?

8 A. Yes.

9 Q. And you wrote in paragraph 21 of that affidavit that the  
10 information in chapter 9 about Operation MERLIN was about an  
11 intelligence effort that was approximately six years old at the  
12 time of publication and dated back to the Clinton  
13 administration. That's what you wrote, right?

14 A. Yes.

15 Q. And you wrote that the story was so old that it could not  
16 harm national security, excuse me, and, in fact, I believed I  
17 performed a vitally important public service by exposing the  
18 reckless and badly mismanaged nature of intelligence on Iran's  
19 efforts to obtain weapons of mass destruction so that the  
20 nation again would not go to war once again based on flawed  
21 intelligence, as it had in Iraq.

22 Those are your words, right?

23 A. Yes.

24 Q. Do you stand by those today?

25 A. Yes.

Risen - Cross

32

1 Q. And you also said in paragraph 19 that you gave serious  
2 consideration to my publication of the information contained in  
3 chapter 9 of *State of War*. Those are your words, right?

4 A. Yes.

5 Q. And that you made the -- you made the decision to publish  
6 the information after it was clear that the main rationale for  
7 fighting the Iraq war was based on flawed intelligence about  
8 Iraq's nonexistent weapons of mass destruction, including its  
9 supposed nuclear program, correct?

10 A. Yes.

11 Q. Those are your words, right?

12 A. Yes.

13 Q. And you said to the press one of your decisions -- reasons  
14 you made the decision to publish was because the press had been  
15 harshly criticized for not doing more independent investigative  
16 reporting before the Iraq war, correct?

17 A. Yes.

18 Q. In your affidavit, you made reference as well to a report  
19 of national intelligence estimate that concluded that there was  
20 no nuclear weapons program in Iran, correct?

21 A. Yes.

22 Q. And you wrote that you were concerned about speculation  
23 that the United States might be planning for a possible war  
24 with Iran again based on supposed intelligence concerns of  
25 weapons of mass destruction just as in Iraq, correct?



Risen - Cross

33

1 A. Yes.

2 Q. Those are your words, Mr. Risen, as to why you published,  
3 correct?

4 A. Yes.

5 Q. And you concluded that after all of this, I realized that  
6 U.S. intelligence on Iran's supposed weapons of mass  
7 destruction was so flawed and that the information I had was so  
8 important that this was a story that the public had to know  
9 about before yet another war was launched.

10 Those are your words, correct?

11 A. Yes.

12 Q. Do you stand by them today?

13 A. Yes.

14 MR. MAC MAHON: May I confer for a second, Your  
15 Honor?

16 THE COURT: Go ahead.

17 MR. MAC MAHON: Nothing further, Your Honor, thank  
18 you.

19 THE COURT: Mr. Risen, I just had a couple of  
20 questions. You use several different literary devices in  
21 chapter 9. I'm just curious as to what as an author you mean  
22 by that; that is, sometimes you have things in quotation marks,  
23 sometimes you have them in italics, and sometimes just in plain  
24 print. Are there reasons why you as an author make those  
25 differences when you're writing?

Risen - Redirect

34

1 THE WITNESS: That's a good question. There's no  
2 hard-and-fast rule. It's just sometimes it's done for emphasis  
3 or to set it off from the rest of the book or the chapter.  
4 Sometimes it's just for, like I said, for emphasis or to  
5 highlight something.

6 THE COURT: But when you're quoting something, I  
7 mean, when I quote, I put it in quotation marks.

8 THE WITNESS: Right, yeah. In books, at least I  
9 think generally in nonfiction current events books are written  
10 differently than newspaper stories, so you have different,  
11 different ways of writing. It's not, it's not written -- you  
12 know, books aren't written like a newspaper story. So you, you  
13 have more of a voice, I guess you'd say.

14 THE COURT: You the author?

15 THE WITNESS: Yes.

16 THE COURT: All right. Is there any redirect,  
17 Mr. Trump?

18 MR. TRUMP: A few questions, if I may have a moment.

19 THE COURT: Go ahead.

20 REDIRECT EXAMINATION

21 BY MR. TRUMP:

22 Q. Mr. Risen, I'm not sure we got a direct answer to the  
23 question relating to the Simon & Schuster document.

24 A. Um-hum.

25 Q. Can you testify today whether you wrote that document?

Risen - Redirect

35

1 A. You know, I don't remember. I think it was a -- as I  
2 said, it was -- I believe, and you should ask -- I think you  
3 guys got it from Simon & Schuster, correct? I think it was --  
4 as I said, in your filings over the years, you have called it a  
5 book proposal. It's not a book proposal. I think it was a  
6 marketing memo for the Frankfurt book show, and that was  
7 probably ten years ago.

8 Q. My question is did you write it, or did someone from Simon  
9 & Schuster write it?

10 A. I probably wrote some of it, and it probably got rewritten  
11 by Simon & Schuster. I can't remember specifically how much  
12 input I had into it. I think I wrote most of it, but --

13 Q. Going back to your position with respect to revealing  
14 confidential source identity directly or indirectly, if I  
15 didn't ask this specifically, it was your position that you  
16 would not testify directly with respect to the identity of a  
17 source or sources, correct?

18 A. Yes.

19 Q. It was also your position that you would not testify to  
20 certain facts that you believed would allow the government to  
21 identify those sources indirectly; is that correct?

22 A. Say that again? I'm sorry.

23 Q. It was your position dating back to 2008 that you would  
24 refuse to answer questions as to certain facts if you believed  
25 those facts would allow an indirect identification of your

Risen - Redirect

36

1 source or sources; is that fair?

2 A. Yes.

3 Q. And those facts would include where you met a source,  
4 correct?

5 A. Yes.

6 Q. When you met a source?

7 A. Yes.

8 Q. And it would also include testimony as to who was not a  
9 source, correct?

10 A. Correct.

11 Q. Was that your position back in 2008?

12 A. Yes.

13 Q. Was it your position in 2011?

14 A. Yes.

15 Q. Is it your position today?

16 A. Yes.

17 Q. So if I were to ask you where you met a source, you would  
18 refuse to answer?

19 A. Yes.

20 MR. TRUMP: That's all I have, Your Honor.

21 THE COURT: Mr. MacMahon?

22 MR. MAC MAHON: Very briefly, Your Honor.

23 RECROSS EXAMINATION

24 BY MR. MAC MAHON:

25 Q. Mr. Risen, from 2006 up to and including today, the

Risen - Redirect

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1 government has never asked you who any of your sources were for  
2 this book, have they?

3 A. Well, they subpoenaed me a lot.

4 Q. But you've never been asked the question at all, correct?

5 A. This is the first time I've testified, today.

6 Q. And no one's ever -- no one from the government has asked  
7 you when any disclosure or any information you learned that's  
8 in chapter 9 was transferred to you, correct?

9 A. I'm sorry, what?

10 Q. No one's asked you when you learned any of information  
11 that's at issue in chapter 9 of *State of War*, right? You've  
12 never been asked the question, right?

13 A. No, I don't think so.

14 Q. You've never been asked who wasn't your sources. In fact,  
15 they've never asked you any of these questions that Mr. Trump  
16 just listed that you would refuse to answer, correct?

17 A. Yeah. I mean, this is the first time I testified, so  
18 right.

19 MR. MAC MAHON: That's all, Your Honor.

20 THE COURT: All right, thank you for your testimony,  
21 Mr. Risen. You may step down.

22 THE WITNESS: Is that it?

23 THE COURT: For now, yes.

24 (Witness excused.)

25 THE COURT: All right, that concludes this hearing,

1 which was aimed at developing the parameters of Mr. Risen's  
2 testimony. I suppose from here on, the next step is for  
3 you-all to decide whether to call Mr. Risen at the trial, and  
4 that's obviously an issue that I'll leave for counsel to  
5 determine.

6 Is there anything else we need to discuss as to this  
7 case that can be done in an open hearing? Mr. Trump, is there  
8 anything further?

9 MR. TRUMP: I think that's fair, Your Honor. Nothing  
10 further.

11 THE COURT: Mr. MacMahon?

12 MR. MAC MAHON: Nothing from defense either, Your  
13 Honor.

14 THE COURT: All right. So we'll need a, what,  
15 ten-minute break to get the courtroom set up?

16 MR. TRUMP: We have to go back to the SCIF and get  
17 the documents.

18 THE COURT: There were some late filings on Friday.  
19 I want to make sure any odds and ends from those filings are  
20 addressed today. I assume, Mr. MacMahon, you and Mr. Pollack  
21 had a chance to look at them?

22 MR. MAC MAHON: We, we got to look at them this  
23 morning, Your Honor.

24 THE COURT: All right.

25 MR. MAC MAHON: Well, I did. He was here a couple

1 days. We can address those today, but it will have to be a,  
2 obviously have to be a closed hearing.

3 THE COURT: Correct. So I'll give you, is ten  
4 minutes enough time to go to the SCIF?

5 MR. TRUMP: Sure.

6 THE COURT: All right, that's fine. So we'll  
7 reconvene at 5 of. Thank you.

8 (Which were all the proceedings  
9 had at this time.)

10

11 CERTIFICATE OF THE REPORTER

12 I certify that the foregoing is a correct transcript of  
13 the record of proceedings in the above-entitled matter.

14

15

16

/s/  
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Anneliese J. Thomson

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